

Reynolds, R. J.

Tobacco Company

STATE OF NEW YORK

THE STATE TAX COMMISSION

In the Matter of the Petitions :
of :
R. J. REYNOLDS TOBACCO COMPANY :
for redetermination of deficiency :
or for refund of franchise taxes :
under Article 9-A of the Tax Law :
for the calendar years 1964, 1965 :
and 1966. :

R. J. Reynolds Tobacco Company, having filed petitions for redetermination of deficiency or for refund of franchise taxes under Article 9-A of the Tax Law for the calendar years 1964, 1965 and 1966, and a hearing having been held in connection therewith at the office of the State Tax Commission in Albany on July 17, 1968, before William F. Sullivan and John J. Genevich, Hearing Officers of the Department of Taxation and Finance, at which hearing the taxpayer was represented by John W. Dowdle, Tax Manager, testimony having been taken and the record having been duly examined and considered,

It is hereby found:

- (1) That the taxpayer was incorporated in New Jersey in 1899 and began business in New York in 1944;
- (2) That based on a field audit report of the New York office, notices of deficiency in taxes were issued on February 1, 1968, as follows:

1964

Entire net income	\$238,477,147.47
Business allocation	02.25904%
Allocated income	5,387,294.14
Tax at 5½%	296,301.18
Tax per report	243,306.31
Deficiency	52,994.87
Interest 3/15/65 to 2/1/68	8,749.00
Total due	\$ 61,743.87

1965

Entire net income	\$249,966,624.05
Business allocation	02.10249%
Allocated income	5,255,523.27
Tax at 5½%	289,053.78
Allocated subsidiary capital	\$3,838,755.00
Tax at 1/2 mill	1,919.38
Total tax	290,973.16
Tax per report	234,578.60
Deficiency	56,394.56
Interest 3/15/66 to 2/1/68	5,791.72
Total due	\$ 62,186.28

1966

Entire net income	\$255,649,793.35
Business allocation	01.99423%
Allocated income	5,098,244.87
Tax at 5½%	280,403.47
Tax per report	224,648.42
Deficiency	55,755.05
Interest 3/15/67 to 2/1/68	2,380.74
Total due	58,135.79

(3) That petitions for redetermination of deficiency of tax were filed on May 2, 1968;

(4) That in arriving at the deficiencies, the following adjustments were made:

1. The numerator of the property factor was increased to reflect all inventories stored in public warehouses located in New York State
2. Receipts from sales of tangible personal property stored in public warehouses located in New York State and shipped to customers located in New York State were allocated 100% to New York
3. Receipts from sales of tangible personal property stored in public warehouses in New York State and shipped to customers outside New York State were allocated 50% to New York
4. Receipts from sales of tangible personal property stored in public warehouses outside New York State and shipped to customers in New York State as a result of orders received by sales personnel of the taxpayer within New York were allocated 100% to New York
5. For the calendar year 1965 investments in a subsidiary corporation which was organized in June 1965 were included in the allocation of subsidiary capital to New York

(5) That the taxpayer's principal offices as well as all manufacturing facilities are situated in Winston-Salem, North Carolina; that its primary business is the manufacture and sale of tobacco products which are sold to domestic jobbers and large retail outlets which have been placed on its list of approved customers; that its products are shipped to such customers either directly from Winston-Salem or from public warehouses, some of which are located in New York State; that the sales are classified as sales by salesmen, direct order sales, and standing order sales; that the bulk of the sales are on a standing order basis to jobbers who require a certain quantity of cigarettes two or three times a week, or at other intervals, such as weekly or bi-weekly; that the taxpayer ships carload lots to the public warehouses which, because of the perishable nature of tobacco products, are instructed to use the first-in first-out basis in filling all orders; that the Winston-Salem office of the taxpayer sends specific instructions to the public warehouses for each shipment to each customer, indicating the type and quantity of tobacco products involved, shipping date and name of the local carrier or trucker to be used;

(6) That the activities conducted in New York State consist of sales promotion and distribution of its tobacco products; that the taxpayer does not maintain any office or telephone, in its name, in New York State; that New York State is divided into three regions each in charge of a regional sales manager; that the three regions are divided into a number of divisions which are in charge of a division sales manager with eleven to fifteen promotional personnel assigned to him to work in his division; that the regional and division sales managers maintain offices in New York in their personal

names and are reimbursed by the taxpayer for all expenses incurred; that the personnel who operate in New York are paid on a strict salary basis and for the most part are engaged in a missionary type effort to promote the demand for the products on the consumer level;

(7) That Penick & Ford, Limited, a Delaware corporation, was formed in June 1965, as a wholly-owned subsidiary of the taxpayer;

(8) That section 210.3 of the Tax Law reads, in part, as follows:

"3. The portion of the entire net income of a taxpayer to be allocated within the state shall be determined as follows:

"(a) multiply its business income by a business allocation percentage to be determined by

"(1) ascertaining the percentage which the average value of the taxpayer's real and tangible personal property within the state during the period covered by its report bears to the average value of all the taxpayer's real and tangible personal property wherever situated during such period;

"(2) ascertaining the percentage which the receipts of the taxpayer, computed on the cash or accrual basis according to the method of accounting used in the computation of its entire net income, arising during such period from

"(A) sales of its tangible personal property located within the state at the time of the receipt of or appropriation to the orders, where shipments are made to points within this state,

"(B) sales of its tangible personal property not located at the time of the receipt of or appropriation to the orders at any permanent or continuous place of business maintained by the taxpayer without the state where the orders were received or accepted within the state and where shipments are made to points within the state,

"(C) sales of its tangible personal property located within this state at the time of the receipt of or appropriation to the orders where shipment is made to points outside of the state and sales of its tangible personal property (except sales described in clause B) located without the state at the time of the receipt of or appropriation to the orders where shipment is made to points within the state, but only to the extent of fifty per centum of the receipts from the sales referred to in this clause,

"(D) sales of its tangible personal property not located at the time of the receipt of or appropriation to the orders at any permanent or continuous place of business maintained by the taxpayer without the state, where the orders were received or accepted within the state and where shipment is made between points outside the state, but only to the extent of fifty per centum of the receipts from the sales referred to in this clause. For purposes of this clause and clause B an order shall be deemed received or accepted within the state if it has been received or accepted by an employee, agent, agency or independent contractor chiefly situated at, connected with, by contract or otherwise, or sent out from a permanent or continuous place of business of the taxpayer within the state.";

(9) That section 210.7 of the Tax Law reads, in part, as follows:

"The portion of the subsidiary capital of a taxpayer to be allocated within the state shall be determined by (a) multiplying the amount of its subsidiary capital invested in each subsidiary during the period covered by its report * * * by the percentage, if any, of the entire capital * * * of such subsidiary required to be allocated within the state on the report or reports, if any, required of such subsidiary * * * for the preceding year, * * *.";

(10) That section 4.11 of the Ruling of State Tax Commission reads, in part, as follows:

"b. A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space which is regularly used by the taxpayer in carrying on its business. Where as a regular course of business, property of the taxpayer is stored by it in a public warehouse until it is shipped to customers, such warehouse is considered a regular place of business of the taxpayer * * * .";

(11) That section 4.13 of the Ruling of State Tax Commission reads, in part, as follows:

"c. Tangible personal property is within New York if and so long as it is physically situated or located here, even though it may be stored in a bonded warehouse. * * * .";

(12) That section 4.16 of the Ruling of State Tax Commission reads, in part, as follows:

"c. Tangible personal property is appropriated to an order when it is set aside or earmarked for or associated with the order by the taxpayer, irrespective of whether title passes at the time of such appropriation."

"d. A permanent or continuous place of business maintained by the taxpayer outside New York is any bona fide office (other than a statutory office), factory, warehouse, or other space outside New York, at which the taxpayer is doing business in its own name in a regular and systematic manner, and which is continuously maintained, occupied and used by the taxpayer in carrying on its business through its regular employees regularly in attendance.";

(13) That section 4.17 of the Ruling of State Tax Commission reads, in part, as follows:

"a. Where the property was located in New York (whether or not at a regular place of business maintained by the taxpayer), at the time of the receipt of or appropriation to the order, (a) if shipment is made to points within New York, 100% of the receipts of such sales is allocable to New York, or (b) if shipment is made to points outside New York, 50% of the receipts is allocable to New York.";

(14) That section 4.18 of the Ruling of State Tax Commission reads, in part, as follows:

"Sales of Tangible Personal Property Located Outside New York. 50% of receipts from sales of tangible personal property located outside New York is allocable to New York under the following circumstances:

"b. If located outside New York at the time of the receipt of or appropriation to the order but not at taxpayer's permanent or continuous place of business, where shipment is made to points in New York, provided that the order was neither received nor accepted in New York."

Based upon the foregoing findings and all of the evidence presented, the State Tax Commission hereby

REDETERMINES AND DECIDES:

(A) That all the tangible personal property owned by the taxpayer and stored in public warehouses located in New York State was properly included in the numerator of the property factor of the business allocation under the provisions of section 210.3 (a) (1) of the Tax Law and section 4.13 of the Ruling of the State Tax Commission;

(B) That receipts from sales of tangible personal property stored in public warehouses located in New York State and shipped to points within this state were properly allocated 100% to New York under the provisions of section 210.3(a)(2)(A) of the Tax Law and section 4.17 of the Ruling of State Tax Commission;

(C) That receipts from sales of tangible personal property stored in public warehouses located in New York State and shipped to points outside this state were properly allocated 50% to New York under the provisions of section 210.3(a)(2)(C) of the Tax Law and section 4.17 of the Ruling of State Tax Commission;

(D) That receipts from sales of tangible personal property stored in public warehouses outside New York State and shipped to customers in New York State are only allocable 50% to New York under the provisions of section 210.3(a)(2)(C) of the Tax Law and section 4.18 b. of the Ruling of State Tax Commission;

(E) That under the provisions of section 210.7 of the Tax Law the taxpayer was not required for the calendar year 1965 to allocate its investment in the wholly-owned subsidiary, Penick & Ford, Limited, because it was not formed until June, 1965, and therefore had no allocation percentage of its entire capital in New York for the preceding year;

(F) That accordingly the taxpayer's 1964, 1965 and 1966 taxes are recomputed as follows:

	<u>1964</u>
Entire net income	\$238,477,147.47
Revised business allocation	02.16173%
Allocated income to New York	5,155,232.04
Tax at 5½%	283,537.76
Plus subsidiary capital tax	142.45
Total tax	283,680.21
Tax as reported	243,448.76
Additional tax due	40,231.45
Interest from 3/15/65 to 2/1/68	6,947.97
Total due	\$ 47,179.42

1965

Entire net income	\$249,966,624.05
Revised business allocation	01.996908%
Allocated income to New York	4,991,603.51
Tax at 5½%	274,538.19
Plus revised subsidiary capital tax	100.91
Total tax	274,639.10
Tax as reported	234,578.60
Additional tax due	40,060.50
Interest from 3/15/66 to 2/1/68	4,514.82
Total due	\$ 44,575.32

1966


Entire net income	\$255,649,793.35
Revised business allocation	01.88297%
Allocated income to New York	4,813,808.91
Tax at 5½%	264,759.49
Plus subsidiary capital tax	6,868.23
Total tax	271,627.72
Tax as reported	231,516.65
Additional tax due	40,111.07
Interest from 3/15/67 to 2/1/68	2,113.85
Total due	\$ 42,224.92

(G) That notices of deficiency for the years 1964, 1965 and 1966 are modified as set forth in (F) above; that the respective modified amounts of \$47,179.42, \$44,575.32 and \$42,224.92 are correct and do not include any taxes or other charges which are not lawfully due and owing; that the taxpayer's petitions for redetermination of franchise taxes under Article 9-A of the Tax Law for the calendar years 1964, 1965 and 1966, except as modified herein, be and are hereby denied.

Dated: Albany, New York

this 8th day of April 19 69

THE STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

Mr. Edward Rook

Mr. Nigel Wright

R. J. Reynolds Tobacco Company

This is one of the pending corporation tax cases transferred to this office by the Law Bureau, on March 25, 1969.

I have reviewed the determination prepared by the Corporation Tax Bureau and I am in agreement with it.

/s/

NIGEL G. WRIGHT

NIGEL WRIGHT
Hearing Officer

March 31, 1969

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DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO: Mr. Best
FROM: Mr. Doran
SUBJECT: R. J. Reynolds Tobacco Company

OFFICE Corporation Tax

DATE February 3, 1969

FEB 4 1969

Attached is a proposed decision of the State Tax Commission in the above matter.

The deficiency in franchise taxes for the calendar years 1964, 1965 and 1966 was based on a field audit report by the New York City office.

The proposed decision modifies the deficiencies as follows:

1. For the years involved, receipts from sales of tangible personal property stored in public warehouses outside New York State and shipped to customers in New York State were allocated 50% to New York instead of 100% because the taxpayer did not have a permanent or continuous place of business in New York State.
2. Additional subsidiary capital tax for 1965 is cancelled. The examiner allocated the stock of a subsidiary formed in 1965 by the allocation shown on its report for 1965. Under Section 210.7 of the Tax Law, the allocation for the preceding year must be used.

E. A. L. Thompson
Director

Attachment

*On finding of Fifo inventory
see Exhibit A page 4
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